

HOUSE HEALTH AND GOVERNMENT AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 675

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO TELECOMMUNICATIONS; ENACTING THE COMMUNITY ACCESS
TO MEDIA AND INFORMATION ACT; PROVIDING FOR COMMUNITIES TO
ENSURE PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS TO CABLE
TELEVISION FRANCHISE AGREEMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Community Access to Media and Information Act".

Section 2. DEFINITIONS.--As used in the Community Access
to Media and Information Act:

A. "access management organization" means an entity
contracted to provide the services of public, educational and
governmental access;

B. "annual gross revenues of the local service
provider" means any and all revenues receivable annually by the

1 service provider subject to federal regulations and laws;

2 C. "demands upon their respective resources" means
3 those amounts that have been quantified by calculating
4 reasonable facilities expenses, payrolls, depreciation and
5 obsolescence of plant and equipment, and other customary and
6 usual elements of operational and capital costs;

7 D. "local franchise authority" means the unit of
8 the political subdivision charged with oversight and regulation
9 of the franchise agreements;

10 E. "political subdivision" means a unit of state
11 government or local government;

12 F. "public, educational and governmental access"
13 means either combined or separate noncommercial channels that
14 are given to communities in exchange for the use of public
15 rights of way and that provide the general public with access
16 to media programming, training and equipment to facilitate the
17 use of bandwidth and spectrum; and

18 G. "service provider" means a corporation that
19 offers communications, information and digital services to a
20 consumer for remuneration.

21 Section 3. NEEDS ASSESSMENT PRIOR TO FRANCHISE
22 AGREEMENT.--

23 A. Prior to the execution of a franchise agreement,
24 the service provider shall conduct an assessment of the
25 communications and information needs of the community. The

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1 methodology for the needs assessment shall conform to generally
2 accepted standards. The results shall be published as a matter
3 of public record, and a public hearing shall be conducted by
4 the political subdivision within ninety days of completion of
5 the needs assessment. The reasonable costs and expenses of
6 such an assessment and public hearing shall be borne by the
7 service provider and shall be reimbursable from the franchise
8 fees payable to the political subdivision.
9

10 B. Compensation receivable by a political
11 subdivision, both from future franchises and pursuant to a
12 franchise agreement currently in force, shall be allocated by
13 the political subdivision for the benefit of its public,
14 educational and government access operations pursuant to this
15 section.

16 C. No assignment of a franchise shall be valid
17 unless:

18 (1) the assignee assumes all of the
19 obligations of the assignor; and

20 (2) the political subdivision has approved the
21 assignment, the approval of which shall not be unreasonably
22 withheld.

23 D. Minimum requirements of franchise agreements
24 executed pursuant to this section for public, educational and
25 governmental access shall include that:

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1 (1) no less than two and one-half percent of
2 the annual gross revenues of the local service provider, or
3 one-half of the franchise fees, received by the political
4 subdivision from the service provider shall be allocated and
5 reserved for the funding of direct governmental or
6 contracted-for access management for general operations;

7 (2) an additional one percent of gross
8 revenues above franchise fees of the service provider shall be
9 set aside for the provision of facilities and equipment to be
10 collected by the political subdivision and utilized to fund
11 direct governmental or contracted-for public, educational and
12 government access facilities and equipment needs in accordance
13 with federal regulations; and

14 (3) the funds payable to the political
15 subdivision pursuant to this section shall be allocated by the
16 political subdivision for the funding of direct governmental or
17 contracted-for access management operations in accordance with
18 the demands upon their respective resources.

19 E. If the service provider also operates as the
20 access management organization, the service provider shall
21 establish clear administrative procedures to make equipment and
22 channel time available to the community and shall state, on
23 screen, that the public is watching an access channel. These
24 requirements shall be specifically described in the franchise
25 agreement and subject to regulation and approval by the local

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underscored material = new
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1 franchise authority.

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 3 F. If a nonprofit organization operates as the
 4 access management organization, the obligations in this section
 5 shall be included in the agreement between the political
 6 subdivision and the nonprofit organization and subject to
 7 regulation and approval by the local franchise authority.

8 G. Nothing in this section prohibits political
 9 subdivisions from obtaining additional funding, bandwidth and
 10 spectrum or services from service providers within the
 11 limitations imposed by federal law.

12 Section 4. CABLE SERVICE.--Cable service providers shall
 13 carry public, educational and governmental access channels and
 14 services in those designated market areas where they currently
 15 carry local commercial channels on their systems.

16 Section 5. EMERGENCY ALERT CAPACITY.--A service provider
 17 shall have the capacity for transmitting emergency alerts via
 18 its system.

19 Section 6. ABANDONED FRANCHISE.--A cable system shall be
 20 deemed abandoned if a renewed franchise agreement has not been
 21 completed by the termination date of the existing franchise
 22 agreement unless a mutually agreed upon extension between the
 23 political subdivision and the service provider for continuation
 24 of negotiations has been reached.

25 Section 7. DIVERSITY IN PROGRAMMING--DISCRIMINATION

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1 PROHIBITED.--

2 A. Service providers, political subdivisions and
3 access management organizations shall act to provide the
4 greatest possible range of diversity in programming and
5 delivery of services to the public.

6 B. No service provider, political subdivision or
7 access management organization covered under this section may
8 discriminate against an individual, organization or corporate
9 entity in regard to service or the granting of contracts and
10 franchises for reasons of race, religion, ethnicity, gender,
11 age or sexual orientation.

12 Section 8. PUBLIC REGULATION COMMISSION--COMPLIANCE.--The
13 political subdivision and the service provider shall each file
14 a report within ninety days of a contract year with the public
15 regulation commission certifying compliance with the provisions
16 of the Community Access to Media and Information Act. The
17 public regulation commission shall serve as a repository and
18 custodian of such compliance certifications only.

19 Section 9. SUBSCRIBER--ACTION FOR COMPLIANCE.--An access
20 management organization or a subscriber to the services
21 included in this section may bring action in district court to
22 enforce compliance with the Community Access to Media and
23 Information Act.

24 Section 10. SEVERABILITY.--If any part or application of
25 the Community Access to Media and Information Act is held

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invalid, the remainder or its application to other situations
or persons shall not be affected.

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